



IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

JUN 17 2009

PATRICIA PRESLEY, COURT CLERK
by DEPUTY

Kirby-Smith Machinery, Inc.,

Plaintiff,

v.

Case No. CJ-2009-3493

AOK Construction, LLC, and
Continental Energy Services, LLC,

Defendants,

and

Ritchie Bros. Auctioneers (America), Inc.,
f/k/a Ritchie Bros. Auctioneers, Inc.

Garnishee,

and

Bank of America, N.A.,

Intervenor.

**AGREED ORDER GRANTING BANK OF AMERICA, N.A.'S MOTION TO
INTERVENE AND AUTHORIZING DISBURSEMENT OF GARNISHED FUNDS**

NOW on this 17 day of June, 2009, the above-captioned case comes before this Court pursuant to the *Motion to Intervene* filed on June 8, 2009 ("Motion"), by Intervenor, Bank of American, N.A. Plaintiff, Kirby-Smith Machinery, Inc. ("KSMI"), appears by counsel, Clay P. Booth of the firm Kline, Kline, Elliott & Bryant P.C.; Defendant, AOK Construction, LLC ("AOK"), appears by counsel, Warren F. Bickford of the firm Fellers, Snider, Blankenship, Bailey & Tippins; Defendant, Continental Energy Services, LLC ("CES"), appears by counsel, James K. Larimore of the firm Durbin, Larimore & Bialick; and Intervenor, Bank of America, N.A. ("BOA"),



appears by counsel

After reviewing the record in this cause and being duly advised in the premises, the Court finds and concludes as follows:

1. On April 13, 2009, KSMI commenced this case against AOK and CES seeking judgment in the amount of \$730,683.24, plus interest, costs, and attorneys' fees.

2. On May 1, 2009, KSMI filed a *Garnishment Affidavit* with the District Court of Oklahoma County, pursuant to 12 O.S. § 1172, seeking the issuance of a prejudgment garnishment summons to be issued to Ritchie Bros. Auctioneers (America), Inc., f/k/a Ritchie Bros. Auctioneers, Inc.

3. On May 1, 2009, KSMI filed its *Notice of Prejudgment Garnishment* ("Notice"), which Notice complies with 12 O.S. § 1172(1)(A)(1) and was properly served on AOK and CES.

4. On May 11, 2009, AOK and CES filed their *Objection to Issuance of Pre-Judgment Garnishee Summons*, which was filed with written agreement and consent of the parties and is timely.

5. On May 28, 2009, an *Agreed Order Authorizing Issuance of Plaintiff's Prejudgment Garnishment Without an Undertaking* was rendered and filed in the case, pursuant to which KSMI properly served the *Prejudgment General Garnishment Summons, Garnishment Affidavit, General Garnishee's Answer/Affidavit, Notice of Garnishment and Exemptions, Claim for Exemption and Request for Hearing*, and all pleadings and documents required by law, upon Garnishee, Ritchie Bros. Auctioneers (America), Inc., f/k/a Ritchie Bros. Auctioneers, Inc.

6. The Garnishee, Ritchie Bros. Auctioneers (America), Inc., f/k/a Ritchie Bros. Auctioneers, Inc., is indebted to or has property within its possession or under its control, which is not by law exempt from seizure or sale upon execution, belonging to AOK in the amount of

\$730,683.24, over and above all offsets ("Garnished Funds").

7. BOA is claiming a lien in and to the Garnished Funds.

8. KSMI holds and is claiming a garnishment lien in and to the Garnished Funds.

9. Counsel for the parties hereto and have reached an agreement in regard to the Motion and the Garnished Funds as referenced in paragraph 5 above, which agreement is set forth in this *Agreed Order Granting Bank of America, N.A.'s Motion to Intervene and Authorizing Disbursement of Garnished Funds* ("Agreed Order").

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the foregoing findings and conclusions are adopted and incorporated by reference as the orders, adjudications, and decrees of this Court as if fully set forth herein.

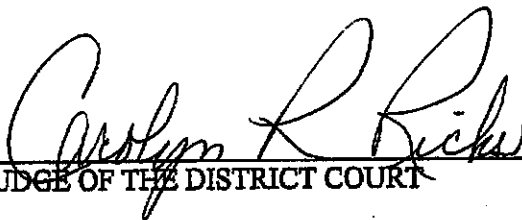
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that BOA's Motion is granted.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Garnishee, Ritchie Bros. Auctioneers (America), Inc., f/k/a Ritchie Bros. Auctioneers, Inc, is hereby authorized and directed to disburse the Garnished Funds to BOA, subject to the following orders of this Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the parties' agreement, this Agreed Order or the disbursement of the Garnished funds are not, and do not constitute: (a) a waiver, relinquishment or discharge, in whole or in part, of whatever type, kind, nature, character and description, of the claimed liens of KSMI and BOA in and to the Garnished Funds; and (b) a determination or adjudication of KSMI and BOA's right, title, lien, claim or interest in and to the Garnished Funds, including the validity, priority and amount of KSMI or BOA's liens, all of which are reserved for further determination by this Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that notwithstanding anything

in this Agreed Order to the contrary, the Garnished Funds shall be deemed, and are, held *in custodia legis*, until the further order of this Court.



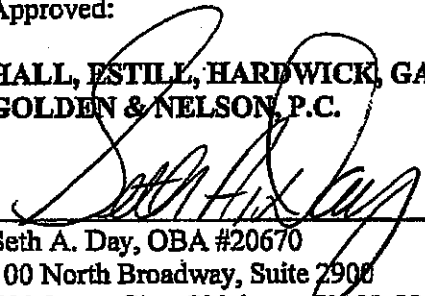
JUDGE OF THE DISTRICT COURT

Kirby-Smith Machinery, Inc. v. AOK Construction, LLC, et al.
Oklahoma County District Court, Case No. CJ-2009-3493
Agreed Order Granting Bank of America, N.A.'s
Motion to Intervene and Authorizing Disbursement
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3890-088

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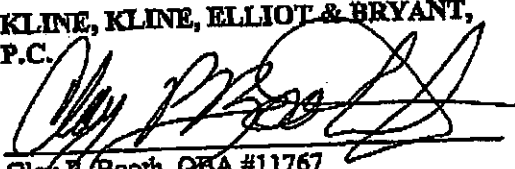
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Agreed Order Granting Bank of America, N.A.'s
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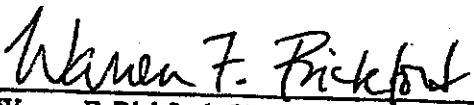
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